Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
The Effect of Foreign Mobile Termination Rates On U.S. Customers	)	IB Docket No. 04-398
	)	
	)	

To: The Commission

REPLY **COMMENTS OF VODAFONE**

NOTICE OF INQUIRY

Vodafone Americas, Inc. - D.C.
2300 N Street, NW. Suite 700
Washington, D.C. 20037
202-223-3979

Vodafone Group, Plc.
The Courtyard
2-4 London Road
Newbury, Berkshire
RG14 1JX, United Kingdom
+44 (0) 1635 33251

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Summary

Trends in international settlements and foreign mobile telephony markets reflect the growth of mobile telephony around the world and moves toward greater transparency and efficiency in pricing. The fact that US IXCs face increased termination costs does not necessarily mean they face increases in mobile termination rates. Movements in costs can also be attributable to relative increases in mobile-terminated traffic volumes and to exchange rate fluctuations. The majority of US traffic to mobile networks terminates in markets where regulators are taking action or where it is clear that rates are decreasing. The particular routes cited by US IXCs do not appear to be major destinations for US callers, and the Commission may address such issues on a case-by-case basis through bilateral activities with regulators.

IXCs' criticisms of the calling party pays ('CPP') termination model go to the reasonableness of mobile termination rates in a CPP environment, and they do not demand that foreign countries abandon a CPP model. Such issues, including the underlying cost modeling, are appropriately the subject of domestic regulation. In any event, the US IXCs' concerns about their overseas operations are not relevant to US consumers. If issues arise in these foreign markets, they are best left to foreign regulators and competition authorities.

While potential discrimination against US carriers or consumers is a legitimate concern and the only necessary focus of any Commission action concerning mobile settlement and mobile termination rates, the record does not reveal that this is a widespread problem of any significance. In contrast, any consensus on the issue of cost modeling will remain elusive given the difficulties and need for country-by-country analysis. There is no consensus even among the US IXCs, and other commenting parties concerned for mobile termination rates advocate a more cautious approach. AT&T's revised TCP (R-TCP) methodology should be rejected as well; it would inexorably lead to conflict between the Commission and foreign regulators and is based on the inapplicable 1997 Benchmarks framework. The US IXCs also engage in inappropriate comparisons between CPP and RPP call environments and a flawed analogy to the Commission's regulation of CLEC access charges.

The record also demonstrates that compensation and termination arrangements between US IXCs and foreign fixed line carriers are critical to determining the significance of foreign mobile termination arrangements on US consumers. US IXCs have ample bargaining power to secure more transparency and responsiveness in that market. The intermediary market must also be considered in weighing the potential impact of Commission-imposed mobile settlement rates on the international telecommunications marketplace. Direct interconnection arrangements should be explored further, although traditional correspondent arrangements persist, perhaps because of US IXCs' interest in return traffic revenues.

In sum, the record demonstrates that it is inappropriate for the Commission to consider indiscriminate regulatory action on mobile settlement rates.

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Vodafone Group Plc and Vodafone Americas, Inc. (together, 'Vodafone') hereby reply to comments submitted in response to the FCC Notice of Inquiry ('NOI') in the above-referenced proceeding.[1] Vodafone principally addresses arguments set forth by the US interexchange carriers ('US IXCs') concerning (1) the deaveraging of fixed and mobile settlement rates and other trends, (2) the calling party pays mobile termination model, (3) the reasonableness of foreign mobile termination rates, and (4) the significance and operation of the intermediary market in international telecommunications.

I. Trends In International Settlements and Foreign Mobile Telephony Markets Reflect an Evolution Toward Transparency and Economically Efficient Pricing

A. Deaveraging of Mobile and Fixed Settlement Rates Reflects Transparency in Rate Setting and Is Not Problematic

AT&T and other US IXCs discuss at considerable length the differences between fixed and mobile settlement rates they pay to foreign fixed line carriers.[2] It is not

[1] *In the Matter of The Effect of Foreign Mobile Termination Rates On U.S. Customers*, Notice of Inquiry, IB Docket No. 04-398, FCC 04-247 (rel. Oct. 26, 2004).
[2] *See* AT&T Comments at 1-3; MCI Comments at 5-7; Sprint Comments at 4-6; *see also* CompTel/ASCENT Comments at 5-7.

disputed that such differences between mobile and fixed settlement rates arise from the deaveraging of different termination services and the fact that these deaveraged prices reflect different costs.[3] As Vodafone stated in its comments, 'US carriers now face more transparent and accurate pricing signals than they did when rates were averaged.'[4] While the US IXCs may dispute the reasonableness of mobile settlement rates and foreign mobile operators' termination rates, none dispute that the deaveraging of settlement rates, in itself, is a welcome development and none suggests a return to averaged rates.[5]

The US IXCs also engage in sweeping generalizations when describing the significance of deaveraging for US carriers and consumers. It is critical, however, to distinguish between movements in total *costs* of mobile settlements for US IXCs and whether such costs *directly relate to actual price increases in mobile termination rates*. US IXCs' experience with rising settlement payments does not necessarily mean that international termination prices or that foreign fixed line operators' underlying costs, including mobile termination rates, are rising.[6] Vodafone has shown that, at least in the markets in which it operates, international termination prices are falling. Any increases in per minute international termination costs (being the sum of fixed and mobile terminated calls) must be attributed in large part to two factors: (1) the change in mix of

[3] Vodafone Comments at 3-5; CTIA Comments at 11-12; GSM Association (GSMA) Comments at 10; CompTel/ASCENT at 5 (recognizing that '[t]here may be additional cost elements that are appropriate to recoup through termination rates'); MCI at 27 (conceding that mobile termination costs may be higher). While asserting that mobile termination rates are higher than costs, neither AT&T nor Sprint contend that mobile termination costs are equivalent to fixed termination costs.
[4] Vodafone Comments at 6.
[5] Vodafone notes that the record by no means demonstrates that mobile surcharges are a primary concern of US consumers. *See* Verizon Comments at 5 ('[i]n 2004, Verizon received fewer than 15 complaints from customers about surcharges on international calls – only about one for each million long distance customers').
[6] AT&T states that on January 1, 2005, it *increased* existing surcharges on 32 routes, *see* AT&T Comments at 21, but does not identify the routes or the proportion of US mobile-bound traffic terminating on these routes, nor does AT&T provide data demonstrating that those increases resulted from increases in foreign mobile termination rates (as opposed to developments in the intermediary market or other causes).

international terminated traffic; and (2) changes in the value of the US dollar relative to other major currencies.

The magnitude of these effects is illustrated by the following example. Data provided by TeleGeography indicating the proportions of incoming international traffic to Europe that is terminated on fixed and mobile lines shows that the proportion of traffic terminated on mobile lines increased from 31% to 34% between 2002 and 2003. [7] Initially assuming constant exchange rates, we calculate the change in the average termination rate that would result.[8] In this example, although mobile termination rates are falling by 9% – the average total termination cost falls only from 9.8 to 9.7 cents.

The results are even more dramatic when accounting for exchange rate movements between 2002 and 2003 – a factor which none of the IXCs addressed in its comments. During that period, the US dollar depreciated against the euro by almost 17%. In our example, the actual termination rate in US dollars paid by US carriers would have risen by 6% (from 9.8 to 10.4 cents), while euro-based rates were again *falling* by 9%

While the US IXCs simply assert that the higher payments for mobile settlements are necessarily attributable to increases in mobile termination rates, they fail to recognize the significance of these other factors and blur the important distinction between ‘costs’ and 'prices.'[9]

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[7] Although these proportions refer to all incoming international traffic to Europe, we assume that the trend will also be representative of traffic coming from the US to Europe.

[8] For purposes of this hypothetical, Vodafone assumes that traffic is terminated on fixed lines at 5 cents, and on mobile lines at this level, plus an additional cost for mobile termination (15.5 cents in 2002). However, Vodafone further assumes that the prices for domestic mobile termination fall by 9% between 2002 and 2003, in line with trends in European countries.

[9] *See* CompTel/ASCENT at 6 (asserting that excessive mobile termination rates impose costs on US carriers and consumers); MCI Comments at 5 (same); Sprint at 5 (same). As AT&T itself acknowledges, however, Commission policy is not concerned with the costs of such payments but ‘the extent to which those payment reflect rates that substantially exceed the underlying costs ….’ AT&T Comments at 34 n.98 (citing Benchmarks Order, 12 FCC Rcd. 19806, ¶ 36 (1997)).

B. The Majority of US Traffic to Mobiles Terminates in Markets Subject to Mobile Termination Rate Regulation or Markets Where Rates are Falling

As Vodafone demonstrated in its comments, regulators throughout its markets are regulating mobile termination rates, and those rates are falling as a result.[10] CTIA similarly confirmed that total mobile termination payments to the top ten destination markets for mobile terminated calls dropped 14 percent from 2001-2003, even as traffic to mobile networks increased by 75 percent during that same period.[11] Other parties confirmed that other high-volume routes for US-originated calls, including the Philippines and Dominican Republic, are subject to regulation or already have comparatively low mobile termination rates.[12]

The record indicates further that regulation of foreign mobile termination rates is increasing, not decreasing. Regulators across Vodafone's markets, not only in Europe but in the Pacific as well, have taken actions or otherwise initiated proceedings into mobile termination rates. MCI, which confirms in its comments that Europe is its principal destination market, provides not a single example of rates rising in any market there.[13] Additionally, two of the principal examples given by the IXCs do not appear to be major destinations for US callers.[14] That disputes have arisen in some countries is not surprising, and the Commission may address those matters on a case-by-case basis through bilateral activities with its regulatory counterparts in those countries.[15]

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[10] Vodafone Comments at 11-13, Annex A; *see also* Telecom Italia at 3 (discussing AGCOM's actions).
[11] CTIA Comments at 4 (citing to TeleGeography data).
[12] *See* Verizon Comments at 2-3 (rates in Dominican Republic declined by 1/3 since 1999 from $0.153 to $0.101 in 2004); GSM Association at 12-13 (Dominican Republic and Philippines).
[13] MCI Comments at 5.
[14] *See* MCI at 8-9 (discussing Nicaragua and Colombia); Sprint at 15 n.20 (Nicaragua).
[15] *See* MCI Comments at 8-9 (discussing dispute in Nicaragua); NIIH Comments at 2-5 (discussing Peru). Vodafone notes that these commenting parties' allegations, if true, raise issues of transparency and independence of the regulator – issues entirely separate from that of the reasonableness of MTRs. Indeed, NIIH advocates a termination rate in Peru of 11-16 cents – far higher than that advocated by US IXCs.

II. The IXCs' Critique of the CPP Termination Model Is Misplaced and Fails to Account for Other Factors Relevant to US Carriers and Consumers

A. While Commenting Parties Dispute the Reasonableness of Mobile Termination Rates, There is No Dispute that CPP is a Legitimate Call Termination Model

The US IXCs prudently do not advocate that the US Government demand that foreign countries abandon a CPP model in favor of the RPP model that exists in the US. Sprint itself 'does not challenge the economic theory underlying CPP' or 'offer a critique why CPP may or not be superior or inferior to the [RPP] scheme used in this country.'[16]

The US IXCs' arguments, therefore, go to the reasonableness of mobile termination rates in a CPP environment. As Vodafone demonstrated in its comments, market- and country-specific factors must be accounted for in determining the reasonableness of mobile termination rates, and the development of cost models requires considerable country-specific data and information.[17] Commission efforts to identify and study a blanket approach would necessarily miss the mark. Whatever methodology is considered – whether LRIC, FLEC, bottom-up versus top-down TELRIC, or generic 'cost orientation' – can only be effected appropriately as a matter of domestic regulation. AT&T's revised TCP benchmarks approach, as discussion below, is woefully flawed.

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[16] Sprint Comments at 2. Sprint's discussion of the impact of CPP termination on the mobile settlements process proves too much. Sprint notes that as between RPP countries, the balance of payments will roughly offset each other. *See* Sprint Comments at 4. In fact, Sprint has demonstrated that the United States' unique RPP environment creates an anomalous situation for its own international carriers and consumers – *not* that CPP is a problem compelling the Commission to craft a remedy with extraterritorial impact. And in any event, as Vodafone and other parties demonstrated, foreign regulators' actions on the domestic front will inure to the benefit of US consumers – provided that the intermediary market works efficiently. *See* Vodafone Comments at 9-11; CTIA Comments at 7-8; GSM Europe Comments at 5; Orange SA Comments at 4-5.

[17] *See* Vodafone Comments at 23-25.

B. Considerations of US IXCs' Overseas Operations Are Not Relevant to US Consumers' Interests

As the Commission's principal concern in this proceeding relates to US consumers, rather than the US IXCs' financial condition, it is important that the Commission step back and assess the multiple factors relevant to US carriers in this proceeding. For example, the impact of foreign mobile termination rates on the competitive environment facing US IXCs' overseas fixed line operations – rather than US consumers -- appears to be a principal area of concern for them.[18] Vodafone cannot envision how competition between foreign mobile operators and foreign fixed line operators would have any impact on US consumers. To the extent there are legitimate issues in this regard, they affect foreign consumers and are best left to foreign regulators and competition authorities. In this regard, European regulators have considered and uniformly rejected fixed line operators' arguments, including those of US IXCs' overseas operations, concerning the competitive impact of such arrangements.[19] The FCC should be wary of IXC attempts to 'forum shop.'

III. The Record Underscores the Difficulties In Determining an 'Appropriate' or 'Reasonable' Foreign Mobile Termination Rate

A. Potential Discrimination Is a Legitimate Focus of Commission Attention

There is a clear consensus that discrimination against US carriers or consumers is a legitimate area of concern.[20] As Vodafone explained, nondiscrimination has been a focus of European regulatory efforts, and Vodafone itself has strongly advocated such

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[18] *See* AT&T Comments at 17-18; MCI Comments at 21-22.

[19] *See* Spanish Competition Court: Casefile 572/03. UNI2 and WORLDCOM/VODAFONE)" 22 December 2004; OFCOM, 21 May 2004 Case CW 0065/05/03, *available at* http://www.ofcom.org.uk/bulletins/comp_bull_index/comp_bull_ccases/closed_all/cw_615/decision.pdf

[20] *See* AHCIET Comments at 3; BellSouth Comments at 2-4; CTIA Comments at 7-8; GSMA at 15-16; GSM Europe at 2, 5; NTT DoCoMo at 3-4; Orange Comments at 4-5; Swiss Federal Office for Communications Comments at 2; Verizon Comments at 5-6; Vodafone Comments at 9; Western Wireless at 2-3.

an approach at the global level.[21] As CTIA states further, 'there are no differences between mobile termination costs for domestic-originated and international-originated traffic.'[22] The US IXCs provide no specific examples, and other commenters cite only to isolated instances.[23]

As Vodafone further demonstrated, discrimination is also the only necessary focus of any Commission action concerning mobile settlement and mobile termination rates. Indeed, ensuring that there is no discrimination between US- and domestic-originated traffic should be the threshold issue in this *NOI*, as nondiscrimination will ensure that foreign regulators' efforts inure to the benefit of domestic and US callers alike.[24] The issue of discrimination – which can be addressed far more objectively than the cost modeling questions with which the US IXCs would have the Commission grapple – should be the sole focus of the Commission's actions vis-à-vis its sister regulators.

B. No Consensus Exists Regarding Cost Modeling

In contrast to the issue of discrimination, the record demonstrates that any sort of consensus on the issue of cost modeling will remain elusive. Vodafone and other parties demonstrated the difficulties in developing cost models, and the need for country-by-country analysis.[25] Among the US IXCs themselves, the recommended methodologies for new benchmark rate remedies range from MCI's LRIC-EMPU, to ATT's R-TCP (with a 5 cent benchmark rate), to Sprint's generic '8-to-10 cent range.'[26] While MCI at least acknowledges that 'there is no easy answer' to identifying the reasonableness of foreign mobile termination rates, given the ongoing and growing

[21] *See* Vodafone Comments at 9-11.
[22] CTIA Comments at 7.
[23] *See, e.g.*, C&W Comments at Appendix.
[24] *See supra* note 19.
[25] *See* Vodafone Comments at 16-25; BellSouth Comments at 18-20; CTIA Comments at 6-7.
[26] AT&T Comments at 42-47; MCI Comments at 22-26; Sprint Comments at 15.

efforts of foreign regulators it is and unnecessary as well as inappropriate to begin the ‘considerable focus on details’ that it concedes would be necessary.[27]

In contrast, other commenting parties supportive of mobile termination rate reductions recommend a more cautious approach. C&W, for example, ‘does not believe the FCC should take prescriptive actions at this time, but rather focus on consumer education efforts and encouragement of national regulators in their domestic efforts.’[28] INTUG, which is strongly supportive of domestic regulation of foreign mobile termination rates, recommends ‘[s]upport from the FCC for more determined interventions’ by foreign regulators and, while encouraging the FCC to consider the market definition and methodological issues raised in the *NOI*, INTUG – unlike the US IXCs – does not here advocate that those determinations be codified in formal Commission action.

Vodafone’s and other parties’ comments underscore that AT&T’s revised TCP (‘R-TCP’) methodology is flawed.[29] As Vodafone explained in its comments, on-net mobile-to-mobile tariffs, which AT&T uses as a proxy, may reveal the short term marginal cost of mobile termination – but would in no circumstances allow full cost recovery.[30] No commenting party, including the US IXCs, advocates that the Commission should adopt such a policy. AT&T itself seems unclear whether it advocates an 'incremental cost' test or some other.[31]

AT&T’s comments also demonstrate that its R-TCP proposal would inexorably lead to conflict between US and foreign regulators. AT&T advocates, in essence, that in determining a reasonable mobile settlement rate the Commission should presume an

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[27] *See* MCI Comments at 33-34.
[28] C&W Comments at 10-11.
[29] *See* Vodafone Comments at 25-29; CTIA Comments at 13; Digicel Comments at 15; Orange SA Comments at 6-7; *see also* CANTO Comments at 4.
[30] *See* Vodafone Comments at 27.
[31] AT&T asserts that Commission policy provides ‘that settlement rates should be based on the incremental costs incurred by the carrier to terminate that traffic.’[31] It later states that such rates

underlying mobile termination rate of $0.04 per minute. No foreign regulator who has seriously considered the issue has reached such a result. As noted above, this result places AT&T alone even among US IXCs.

AT&T concludes that '[t]he Commission has previously found that it cannot rely on the actions of foreign regulators to ensure that U.S. consumers are not harmed by above-cost international settlement rates,' and that 'the same finding' is required here.[32] As Vodafone and other commenters discussed, however, the Commission's 1997 benchmarks proceeding occurred under very different circumstances.[33] That proceeding thus provides no guidance for this issue. Moreover, foreign regulators are, in fact, taking action here by addressing cost modeling issues themselves.

Given the inconsistencies and shortcomings of the IXCs' arguments concerning mobile termination costs and cost modeling, the Commission must discount their assertions concerning the impact on US consumers and carriers.[34] While the US IXCs do not meaningfully substantiate their claims regarding subsidies, MCI in particular reaches its figure based on an absurdly low comparison between termination rates in calling party pays ('CPP') and receiving party pays ('RPP') environments.[35] As discussed above and in Vodafone's comments, the record here and in the Commission's *ISP Reform* docket demonstrates that the differences between CPP and RPP cost structures and demand characteristics will result in quite different outcomes.

'would tend to the level of … TSLRIC, *plus a reasonable contribution to joint and common costs …*'

[32] AT&T Comments at 24.

[33] *See* Vodafone Comments at 25-29; CTIA Comments at 13; *see also* C&W Comments at 9-10.

[34] MCI asserts that US consumers could soon pay close to $1 billion in 'annual subsidies' to foreign mobile operators. MCI Comments at 5-8. CompTel asserts that MNOs collected over $500 million in excess charges in 2003. CompTEL/ASCENT Comments at 6-7.

[35] *See* MCI Comments at 6-7 (citing Sprint cost study models at Table 1).

Finally, AT&T's and the other US IXCs' analogy to the Commission's regulation of CLEC access charges is flawed.[36] In that circumstance, the Commission was the appropriate domestic regulator considering the issue -- in contrast to the US IXCs' call for the FCC to interject itself into purely domestic matters abroad.

IV. The Record Underscores that the Intermediary Market Is Critical to Understanding the Impact of Foreign Mobile Termination Rates on US Carriers and Consumers

In its comments, Vodafone demonstrated that the compensation and termination arrangements between US and foreign fixed line carriers are critical to determining the impact, if any, of foreign mobile operators' domestic termination arrangements on US consumers.[37] Numerous other commenters share Vodafone's view that the intermediary market must be a focus of the Commission's assessment in the *NOI*.[38] Indeed, the US IXCs' comments underscore the inefficiencies of the intermediary market, explicitly describing the time lags between mobile termination rate changes, mobile settlement rate changes and the surcharges imposed on US end users.[39] As Vodafone demonstrated in its comments, given the high volume of US-outbound traffic that US IXCs control, they cannot seriously contend that they lack bargaining power vis-à-vis their foreign counterparts. They should be able to secure more transparency and responsiveness in the market if it is so clearly in their interests to do so.

Vodafone and other parties also demonstrate that, because of this intermediary market, there is a real risk that any Commission-imposed mobile settlement rate will have unintended consequences.[40] C&W states that 'direct action by the Commission could result in disruption of service delivery for calls to foreign mobiles' given that

[36] *See* AT&T Comments at 36-39; MCI Comments at 13-15; Sprint Comments at 7-9.
[37] Vodafone Comments at 31-35.
[38] *See* NTT DoCoMo Comments at 7-9; GSM Europe Comments at 8-9; Orange SA Comments at 8; Telefonica Comments at 8-10; *see also* CheapTelephoneBills.com at 1-2.
[39] AT&T Comments at 21-23; Sprint Comments at 12-13.
[40] *See* Vodafone Comments at 33-34.

'international [fixed line] operators would have the option of simply declining to carry any traffic destined for the foreign mobile network.'[41] Sprint itself expressed this same concern in the *ISP Reform* proceeding.[42] The nature of the intermediary market thus further distinguishes the 1997 benchmarks proceeding from the issues raised in the *NOI.*

Finally, the impact of mobile settlement and mobile termination rates on the balance of payments is raised as a concern as well.[43] In this regard, Vodafone notes that with the exception of Sprint, the US IXCs do not appear to suggest direct interconnection with foreign mobile operators.[44] While AT&T states that with a few exceptions 'its efforts to enter into similar direct arrangements on other international routes have not been successful,' it does not identify any reasons for this lack of success. Fixed line intermediaries contribute to US IXCs' mobile settlement payments and, as Sprint acknowledges (contrary to AT&T), direct arrangements would address such concerns by enabling the US IXCs to bypass the foreign fixed line operator and terminate calls directly with the mobile operator.[45] Vodafone and other foreign operators are generally obliged to offers direct interconnection to all carriers requesting it.[46]

The more traditional correspondent arrangements, however, continue to linger for mobile-terminated traffic, notwithstanding the dynamism of the international

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[41] C&W Comments at 10.
[42] Sprint Comments in IB Docket No. 02-324, at 21.
[43] *See* AT&T Comments at 9-10 (discussing payments as between US and Mexico); Sprint Comments at 3-4, 12.
[44] Vodafone notes Sprint's reference to other foreign mobile operators' refusals to directly interconnect with Sprint, as well as the purportedly 'untenable' conditions Vodafone sought to impose on such interconnection. *See* Sprint at 10, n.17. Vodafone is unaware of any such 'Vodafone Club' policy referred to by Sprint and, in any event, Vodafone notes that it and other mobile operators are subject to interconnection obligations under the EU Regulatory Framework such that US carriers may refer such matters to NRAs in the event of disputes.
[45] *See* Sprint Comments at 10, 15-16; AT&T Comments at 39 (dismissing significance of direct interconnection arrangements).
[46] *See* Access Directive, Art. IV, 2002/19/EC.

telecommunications market.[47] As discussed herein and in Vodafone's comments, such correspondent arrangements between US and foreign fixed line operators do not appear to be particularly efficient.[48] It may well be that traditional correspondent arrangements have been slow to disappear because of US IXCs' ongoing interest in revenues received for return traffic from foreign correspondents.

V. Conclusion

For the foregoing reasons, the comments demonstrate that in light of foreign regulators' actions, the downward trend in mobile termination rates in many countries, the difficulties of cost modeling in this context, and the inefficiencies and lack of

[47] *See International Settlements Policy Reform International Settlement Rates*, First Report and Order, 19 FCC Rcd 5709, ¶¶ 23, 33 (2004) (discussing 'spot markets' and other developments putting downward pressure on rates).

[48] Vodafone Comments at 33-34.

transparency in the intermediary market, it is inappropriate for the Commission to consider indiscriminate regulatory action on mobile settlement rates.

Respectfully submitted,

VODAFONE AMERICAS, INC.
VODAFONE GROUP, PLC.

By: /s/____________________

Barbara Phillips
Vice President, Public Policy
Vodafone Americas, Inc.
2300 N Street, N.W., Suite 700
Washington, D.C. 20037
202-223-3979

Richard Feasey
Director, Public Policy
Vodafone Group, Plc.
The Courtyard
2-4 London Road
Newbury, Berkshire
RG14 1JX, United Kingdom
+44 (0) 1635 33251

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